In The

Supreme Court of the United States

OCTOBER TERM, 1967

No. 468

RAYMOND CHARLES SMITH,
Petitioner,

v.

STATE OF OREGON

REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

Respondent's Brief in Opposition, at page 2 under the heading "Manner of Raising Federal Question", states:

> "Respondent accepts petitioner's statement with one exception. Petitioner's motion in arrest of judgment founded on Eighth and Fourteenth Amendment grounds was deemed denied by operation of law *because petitioner did not set the matter for a hearing before the expiration of 55 days pursuant to ORS 136.810*[1] *and ORS 17.615*[2]." (emphasis supplied.

This is not the fact. Petitioner did bring on the motion in arrest of judgment for timely hearing before the trial judge at the same time as the motion for a new trial.

Said judge did not decide this motion but allowed his time to expire so that it was "deemed denied" by operation of the cited statutes. (The trial judge did decide the accompanying motion for a new trial, however.)

Unfortunately the record presently before this Court does not show this since it was not anticipated this claim would be made at this time when such claim was not asserted by Respondent before the Supreme Court of Oregon when this issue was presented to (Appendix to Petition pp. 22-23) and decided by that Court (Appendix p. 12).

A Supplemental Record including the transcript of the hearing before the Circuit Court on the motions for new trial and in arrest of judgment, and the Notice of Appeal to the Supreme Court of Oregon asserting as one of the grounds for appeal:

> "5. The Court erred in denying motion in arrest of judgment",

has been obtained for forwarding with this Reply.

Respectfully submitted,

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